

## CIVIL COVER SHEET

JS 44 (Rev. 12/07) (cand rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

## I. (a) PLAINTIFFS

TELESPREE COMMUNICATIONS

## DEFENDANTS

MFORMATION TECHNOLOGIES INC.

(b) County of Residence of First Listed Plaintiff San Francisco, California  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

STEPHEN J. AKERLEY (SBN -160757)  
O'Melveny & Myers LLP  
2765 Sand Hill Road  
Menlo Park, California 94025

County of Residence of First Listed Defendant Middlesex, New Jersey  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input checked="" type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<b>Habeas Corpus:</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 550 Civil Rights	<b>IMMIGRATION</b>	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare		<input type="checkbox"/> 463 Habeas Corpus—Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities—Employment		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities—Other				
	<input type="checkbox"/> 440 Other Civil Rights				

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

## VI. CAUSE OF ACTION

Brief description of cause:  
Misappropriation of trade secrets.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** In excess of \$75,000. **CHECK YES only if demanded in complaint:** **JURY DEMAND:** ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE"

## IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE  
July 10, 2008

SIGNATURE OF ATTORNEY OF RECORD

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7  
8 Attorneys for Plaintiff  
9 Teleस्पree Communications

E-filing

FILED

JUL 10 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TELESPREE COMMUNICATIONS

Plaintiff,

v.

INFORMATION TECHNOLOGIES  
INC.

Defendant.

CV

08

Case No.

3347

BZ

COMPLAINT FOR:

- (1) MISAPPROPRIATION OF TRADE SECRETS,
- (2) BREACH OF NON-DISCLOSURE AGREEMENT,
- (3) CONVERSION,
- (4) UNFAIR COMPETITION,
- (5) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING.

DEMAND FOR JURY TRIAL

1 For its Complaint, Plaintiff Telespree Communications (“Telespree”), by and  
2 through its attorneys, hereby alleges as follows:

3 **PARTIES**

4 1. Plaintiff Telespree is a corporation organized under the laws of  
5 California with its principal place of business in San Francisco, California.

6 2. On information and belief, Defendant MFormation Technologies Inc.  
7 (“MFormation”) is a corporation organized under the laws of Delaware with its principal  
8 place of business in Edison, New Jersey. On information and belief, Telespree alleges that  
9 MFormation does business in California.

10 **JURISDICTIONAL STATEMENT**

11 **Jurisdiction**

12 3. This Court has jurisdiction of this action under 28 U.S.C. §§ 1332  
13 and 1367(a). The Court has the power to grant declaratory and injunctive relief under 28  
14 U.S.C. §§ 2201 and 2202.

15 **Venue**

16 4. Venue is proper in this Court under 28 U.S.C. § 1391(a) because a  
17 substantial part of the events that gave rise to Telespree’s claims took place within the  
18 District, the defendant’s tortious conduct was directed at this District, and because  
19 Telespree was injured by the defendant’s tortious conduct committed in this District.

20 **Intradistrict Assignment**

21 5. This action arises in San Francisco County because Telespree’s trade  
22 secret technology that is the subject of this litigation was developed and maintained in  
23 Telespree’s headquarters in San Francisco, California. Pursuant to Civil Local Rule 3-2,  
24 this action is properly assigned to the San Francisco Division of the Northern District of  
25 California.

26 **TELESPREE’S TRADE SECRET TECHNOLOGY**

27 6. Telespree designs and licenses a software platform for activating,  
28 managing, and updating mobile devices “over-the-air,” which allows telecommunications

1 companies to automate functions that previously were performed by customer service  
2 representatives. Access to Telespree's technology, together with related technical  
3 documentation and information, is not commonly provided to the general public or to  
4 other persons who can obtain economic value from its disclosure or use. The secrecy of  
5 this information provides Telespree a substantial business advantage.

6           7. Telespree takes reasonable steps under the circumstances to maintain  
7 the confidentiality of its technology. Telespree has established trade secret policies for all  
8 its employees, maintains physical security in all its buildings, limits access to its  
9 technology—including software, specifications, and related information—to employees  
10 and business partners who are required to execute strict confidentiality agreements, and  
11 strictly monitors access to its technology.

12           8. Telespree's intellectual property, including its trade secrets, provide  
13 it with a competitive advantage in the marketplace. Unauthorized receipt and disclosure  
14 of these trade secrets would necessarily harm Telespree's business. Accordingly,  
15 Telespree maintains the specifications and details of its technology and related  
16 information as a trade secret.

17       **MFORMATION'S ILLEGAL APPROPRIATION AND USE OF TELESPREE'S**  
18                               **TRADE SECRET TECHNOLOGY**

19           9. On or about October 17, 2005, Telespree Chief Technology Officer  
20 Jim Lavine contacted MFormation to express interest in a potential partnership between  
21 Telespree and MFormation. Telespree sought to license MFormation's Device  
22 Management (DM) server software into its suite of self-service applications for wireless  
23 devices. MFormation executives agreed to discuss partnership opportunities with  
24 Telespree.

25           10. On December 5, 2005, Telespree and MFormation executed an  
26 agreement entitled "Mutual Nondisclosure Agreement," a true and correct copy of which  
27 is attached hereto as Exhibit A (hereafter, the "NDA"). Under the NDA, the parties agreed  
28 that confidential information disclosed to each other during business negotiations would



1 remain confidential and would not be used “for any purpose except to evaluate and engage  
2 in discussions concerning a potential business relationship between the parties.”

3           11. Preliminary business discussions centered on a partnership to provide  
4 software solutions to Virgin Mobile USA (“VMU”), a major wireless carrier and a  
5 Telespree client. On or about March 3, 2006, at VMU’s request, Telespree prepared and  
6 delivered a comprehensive document detailing the operations of Telespree’s wireless  
7 management software and describing how MFormation’s technology could be integrated  
8 into Telespree’s platform. In preparing for this presentation, Telespree disclosed  
9 confidential details of its “bootstrapping” process, a software and network configuration  
10 process that allows a mobile device to automatically register and self-configure itself on a  
11 wireless network. As then understood by Telespree, MFormation’s software product  
12 lacked bootstrapping capability for non-programmed devices. During these discussions,  
13 Telespree further provided the details of its technology, specifically but not limited to its  
14 bootstrapping process as implemented for VMU. Each of Telespree’s disclosures,  
15 including the detailed discussions of its bootstrapping process, was governed by the terms  
16 of the NDA between the parties.

17           12. On or about March 10, 2006, MFormation’s Vice President of Sales,  
18 Brian Espy, sent an e-mail to Telespree’s Vice President of Sales, Ellen Schwab,  
19 proposing the two companies “proceed in a partnership.” In that e-mail, Espy explained  
20 that MFormation hoped to “license [Telespree software] from you and then pass it along  
21 to VMU as a bundled and hosted offering.” Schwab responded that Telespree was not  
22 interested in permitting MFormation to license and host the Telespree platform, but that  
23 the company was interested in pursuing other forms of collaboration.

24           13. Following Schwab’s March 10 message, MFormation terminated all  
25 communication with Telespree, despite the interest MFormation had expressed in a  
26 partnership.

27           14. On or about June 30, 2008, Telespree became aware of an  
28 MFormation patent application, United States Patent Application No. 20080064367, dated

1 September 2006. Upon review, Telespree realized that the patent application contained  
2 numerous Telespree trade secrets, specifically, but not limited to, the bootstrapping  
3 process that had been disclosed to MFormation in or about March 2006. MFormation's  
4 claims closely mimic Telespree's bootstrapping process for the over-the-air registration,  
5 configuration, and management of wireless devices. On information and belief,  
6 MFormation's patent application was developed directly from trade secrets Telespree  
7 provided to MFormation in the course of its 2006 discussions, constituting an  
8 unauthorized use and disclosure under the parties' NDA.

### 9 **FIRST CLAIM FOR RELIEF**

#### 10 **(Misappropriation of Trade Secrets)**

11 15. Telespree incorporates by reference the allegations set forth in each  
12 of the previous paragraphs.

13 16. Telespree's trade secret technology consists of software,  
14 documentation, and other information not generally known to the public. This material is  
15 the subject of reasonable measures by Telespree to maintain its secrecy, and is the product  
16 of substantial investment in money and effort to develop it. Telespree's technology cannot  
17 be easily duplicated without specific knowledge of Telespree's trade secrets. The software  
18 and documents comprising Telespree's mobile technology therefore constitute "trade  
19 secrets" under applicable law.

20 16. MFormation wilfully and maliciously misappropriated Telespree's  
21 trade secret technology by acquiring those trade secrets, which were communicated in  
22 confidence and under the terms of the NDA, and using and disclosing them to compete  
23 with Telespree, as well as in a patent application, without Telespree's express or implied  
24 consent.

25 17. MFormation's conduct has damaged Telespree and will cause  
26 irreparable harm and damage in the future. Telespree is entitled to recover from  
27 MFormation the damages sustained as a result of the misappropriation alleged here. The  
28

1 amount of such damages cannot be determined at this time but will be proven at trial.  
2 Telespree is further entitled to take sole ownership of all of MFormation's existing or  
3 pending patents that incorporate misappropriated Telespree trade secrets.

4 18. Telespree is informed and believes that MFormation's acts of  
5 misappropriation were both willful and malicious, meriting the imposition of punitive  
6 damages.

7 19. Telespree is informed and believes that MFormation are continuing  
8 and will continue to misappropriate Telespree technology. By reason of that ongoing  
9 misappropriation, Telespree will suffer severe and irreparable harm and damage, and  
10 Telespree will be without an adequate remedy at law. Telespree is therefore entitled to an  
11 injunction restraining MFormation from misappropriating Telespree technology.

## 12 **SECOND CLAIM FOR RELIEF**

### 13 **(Breach of Non-Disclosure Agreement)**

14 20. Telespree incorporates by reference the allegations set forth in each  
15 of the previous paragraphs.

16 21. At all relevant times, the NDA was valid and in effect.

17 22. All information about Telespree software the company shared with  
18 MFormation in the course of business negotiations constitutes "Confidential Information"  
19 under the terms of the NDA.

20 23. By including Telespree trade secrets in United States Patent  
21 Application No. 20080064367, MFormation breached the NDA.

22 24. Telespree is entitled to recover from MFormation the damages  
23 sustained as a result of these breaches of the NDA. The amount of such damages cannot  
24 be determined at this time but will be proven at trial. Telespree is further entitled to  
25 recover from MFormation the gains, profits, and advantages that MFormation obtained as  
26 a result of these breaches. Telespree is currently unable to ascertain the full extent of these  
27 gains, profits, and advantages, but will prove the value thereof at trial.

28 25. Telespree is informed and believes that MFormation is continuing

1 and will continue to breach the NDA. By reason of these ongoing breaches, Telespree has  
2 and will suffer great and irreparable harm and damage, and Telespree will be without an  
3 adequate remedy at law. As a result, and pursuant to the express terms of the Agreements  
4 set forth above, Telespree is entitled to an injunction restraining MFormation from  
5 breaching the NDA.

### 6 **THIRD CLAIM FOR RELIEF**

#### 7 **(Conversion)**

8 26. Telespree incorporates by reference the allegations set forth in each  
9 of the previous paragraphs.

10 27. At all relevant times, all Telespree technology was and is the sole  
11 property of Telespree.

12 28. Through the acts set forth above, MFormation took the Telespree  
13 technology and converted it to its own use, specifically but not limited to, MFormation's  
14 claimed ownership of the information contained in its United States Patent Application  
15 No. 20080064367.

16 29. Telespree is entitled to recover from MFormation the damages  
17 sustained as a result of these conversions of Telespree's property. The amount of such  
18 damages cannot be determined at this time but will be proven at trial. Telespree is further  
19 entitled to recover from MFormation the gains, profits, and advantages that MFormation  
20 obtained as a result of these conversions. Telespree is currently unable to ascertain the  
21 full extent of these gains, profits, and advantages, but will prove the value thereof at trial.  
22 Telespree is also entitled to transfer of all rights in and to said Patent Application,  
23 including title to and ownership of said Patent Application.

24 30. Telespree is informed and believes that MFormation's acts of  
25 conversion were both willful and malicious, meriting the imposition of punitive damages.

### 26 **FOURTH CLAIM FOR RELIEF**

#### 27 **(Unfair Competition)**

28 31. Telespree incorporates by reference the allegations set forth in each



1 of the previous paragraphs.

2 32. Telespree has invested significant resources in developing its  
3 technology. Telespree also invests significant resources to market its products effectively  
4 against competing companies. Because its technology products constitute the bulk of the  
5 Telespree's revenues, these investments are the primary means by which Telespree  
6 operates a successful business. MFormation's willful misappropriation therefore  
7 constitutes unfair competition against Telespree.

8 33. Telespree is entitled to recover from MFormation the damages  
9 sustained as a result of MFormation's unfair competition against Telespree. The amount  
10 of such damages cannot be determined at this time but will be proven at trial. Telespree is  
11 further entitled to recover from MFormation the gains, profits, and advantages that  
12 MFormation obtained as a result of its unfair competition. Telespree is currently unable  
13 to ascertain the full extent of these gains, profits, and advantages, but will prove the value  
14 thereof at trial.

15 34. Telespree is informed and believes that MFormation's acts of unfair  
16 competition were both willful and malicious, meriting the imposition of punitive damages.

#### 17 **FIFTH CLAIM FOR RELIEF**

##### 18 **(Breach of the Covenant of Good Faith and Fair Dealing)**

19 35. Telespree incorporates by reference the allegations set forth in each  
20 of the previous paragraphs.

21 36. MFormation represented an interest in a business partnership with  
22 Telespree. In so doing, MFormation gained access to information about Telespree  
23 technology it would not normally have encountered in the normal course of business. In  
24 lieu of culminating the proposed partnership, MFormation willfully and maliciously  
25 appropriated Telespree's technology for its own use in breach of the covenant of good  
26 faith and fair dealing.

27 33. Telespree is entitled to recover from MFormation the damages  
28 sustained as a result of MFormation's breach of the covenant of good faith and fair

1 dealing. The amount of such damages cannot be determined at this time but will be  
2 proven at trial. Telespree is further entitled to recover from MFormation the gains,  
3 profits, and advantages that MFormation obtained as a result of its breach. Telespree is  
4 currently unable to ascertain the full extent of these gains, profits, and advantages, but will  
5 prove the value thereof at trial.

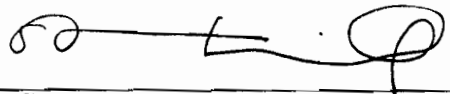
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff Telespree Computer, Inc. prays for judgment  
8 against MFormation as follows:

- 9 1. For compensatory damages in an amount to be determined at trial;
- 10 2. For punitive damages in an amount to be determined at trial;
- 11 3. For a preliminary injunction restraining the misappropriation of  
12 Telespree technology;
- 13 4. For an injunction permanently restraining the misappropriation of  
14 Telespree technology;
- 15 5. For a preliminary injunction restraining the breach of the  
16 Agreements;
- 17 6. For the transfer of title of United States Patent Application No.  
18 20080064367 and any related applications to Telespree;
- 19 7. For costs of suit incurred herein; and
- 20 8. For such other relief as the Court deems just and proper.

21  
22 Dated: July 10, 2008

STEPHEN J. AKERLEY  
O'MELVENY & MYERS LLP

23  
24 By:   
25 Stephen J. Akerley  
26 Attorney for Plaintiff  
27 Telespree Communications  
28